

CITY OF MILWAUKEE
Department of Administration - Business Operations Division
Procurement Services Section

TERMS AND CONDITIONS FOR FORMAL COMMODITY CONTRACTS

1. **SAFETY REQUIREMENTS** – All material, equipment and supplies provided to the City must comply fully with all safety requirements as set forth by the Wisconsin Administration Code, Rules of the Industrial Commission on Safety and all applicable OSHA Standards.
2. **DELIVERY F.O.B. DESTINATION** – All bid prices must include delivery F.O.B. destination unless otherwise specified.
3. **PACKAGING** – Materials shall clearly be labeled and packaged in accordance with federal and Wisconsin requirements, and as specified in the terms and conditions of the invitation for bid if so specified.
4. **SUBSTITUTION AND EQUIVALENTS** – Substitutions or equivalents of specified items may be permitted at the sole discretion of the City Purchasing Director.
5. **APPLICABLE LAW** – Except as provided herein, Wisconsin will be the forum for all disputes.
6. **ASSIGNMENT OR SUBCONTRACT** – Performance of this contract may not be assigned by the contractor without consent of the City Purchasing Director. All subcontractors must also be approved by the City Purchasing Director.
7. **CONTRACT CONTINGENT UPON FUNDING** – The failure of the Common Council of the City of Milwaukee to appropriate funds for the performance of the contract shall void the contract.
8. **RIGHT TO ORDER WITHIN 10%** - The City Purchasing Director reserves the right to order within ten percent (10%) more or less of the quantities specified in the contract.
9. **PURCHASE ORDER** – No shipments shall be made under the contract until a signed purchase order or vendor contract has been received unless otherwise agreed to by the City Purchasing Director. Note: A purchase order is not issued for a vendor contract (formerly known as a Blanket Contract).
10. **NONDISCRIMINATION** – The contractor will not discriminate against any qualified employee or qualified applicant for employment because of sex, race, religion, color, national origin or ancestry, age, disability, lawful source of income, marital status, sexual orientation, gender identity or expression, past or present membership in the military service, familial status, or based upon affiliation with, or perceived affiliation with any of these protected categories as provided by Section 109-45 of the Milwaukee Code of Ordinances. This provision must be included in all subcontracts.

Contractor agrees that it will comply with all applicable requirements of the Americans with Disability Act of 1990, 42 U.S.C. 12101, et. seq.
11. **AMENDMENTS TO CONTRACT** – The contract can only be modified by a written amendment issued by the DOA – Business Operations Division, Procurement Services Section and signed by both parties. Amendments other than described above will not be recognized by the City.
12. **INDEMNIFICATION** – The contractor will indemnify, defend and hold harmless the City against all damages, losses, liabilities, judgments, costs and expenses arising in whole or in part out of the contractor's performance, negligence or failure to perform under the contract.
13. **DEFENSE OF SUITS** – Contractor will save and indemnify and keep harmless the City of Milwaukee against all liabilities, judgments, costs and expenses which may be claimed against the City in consequence of the granting of this contract.
14. **WAIVER** – One or more waivers by any party of any term of the contract will not be construed as a waiver of a subsequent breach of the same or any other term. The consent or approval given by any party with respect to any act by the other party requiring such consent or approval shall not be deemed to waive the need for further consent or approval of any subsequent similar act by such party.
15. **DELAYS IN DELIVERY** – Delays in delivery caused by any bona fide strikes, government priority or requisition, riots, fires, sabotage, acts of God, or any other delays deemed by the City Purchasing Director to be clearly and unequivocally beyond the contractor's control will be recognized by the City. The contractor may be relieved of the responsibility of meeting the delivery time as stipulated in the contract upon contractor's filing with the City Purchasing Director just and true statements requesting an extension of delivery, signed by the contractor and giving in detail all the essential circumstances which, upon verification by the City, justify such action under the provisions of this section by the City Purchasing Director. THE REQUEST FOR EXTENSION MUST BE FILED WITH THE CITY PURCHASING DIRECTOR NO LATER THAN SEVEN (7) CALENDAR DAYS PRIOR TO THE ACTUAL DELIVERY DATE. FAILURE TO FILE THIS REQUEST FOR DELIVERY EXTENSION SHALL RENDER THE

CONTRACTOR LIABLE FOR THE DIFFERENCE BETWEEN THE "OPEN MARKET" AND THE CONTRACT PRICE, AND OTHER COSTS, AS APPLICABLE, UNDER THE UNIFORM COMMERCIAL CODE.

16. **MATERIAL SAFETY DATA SHEETS** – When applicable, the contractor shall supply the City with a MATERIAL SAFETY DATA SHEET for any hazardous material purchased. In addition, the contractor shall supply any material relating to the safe use of this material and hazards associated with its use, including but not limited to installation procedures and personal "protective" equipment requirements. All hazardous components shall be identified.

ALL DATA SHEETS MUST HAVE THE CORRESPONDING CITY PURCHASE ORDER NUMBER/VENDOR CONTRACT NUMBER CLEARLY PRINTED ON THE FIRST PAGE. Sheets must be sent to the City Purchasing Director prior to the shipment of the material. NO PAYMENTS WILL BE MADE UNTIL THE MATERIAL SAFETY DATA SHEETS ARE RECEIVED.

17. **EXTENSIONS** – Agreements shall run for the period indicated. Option of extension, if mutually agreeable to the City and the contractor, shall be in writing and exercised within sixty (60) days of the contract expiration date, or as otherwise expressed in the bid.
18. **PAYMENT FOR CONTRACT PERFORMANCE** – It is the City's policy to pay all invoices within 30 days. If the City does not make payment within 45 days after receipt of properly completed supporting payment and other required contract documentation, the City shall pay simple interest beginning with the 31st calendar day at the rate of one percent per month (unless the amount due is subject to a good-faith dispute and, before the 45th day of receipt, notice of the dispute is sent to the contractor by first-class mail, personally delivered, or sent in accordance with the notice provisions in the contract). If there are subcontractors, consistent with s.66.0135(3), Wis. Stats., the prime contractor must pay the subcontractors for satisfactory work within seven days of the contractor's receipt of payment from the City of Milwaukee, or seven days from receipt of a properly submitted and approved invoice from the subcontractor, whichever is later. If the contractor fails to make timely payment to a subcontractor, the contractor shall pay interest at the rate of 12 percent per year, compounded monthly, beginning with the 8th calendar day. Reference Common Council File No. 101137 adopted January 2011.
19. **PAYMENT MONITORING REQUIREMENTS** – All Contractors awarded a contract valued at \$25,000.00 or more are required to participate in training on the City of Milwaukee's contract compliance software. Contractors must complete the training no later than 30 days after the date of contract award. Throughout the contract term, Contractors are required to regularly provide timely payment information in the City's contract compliance software. Please contact the Office of Small Business Development (OSBD) at 414-286-5553 should you have any questions or concerns regarding the training process.
20. **CONTRACT DEFAULT** – If the contractor shall fail to fully and completely perform the contract within the time designated for its performance, the contractor shall pay the City, as liquidated damages for such default, any amount of any deposit or bond required by the contract. Failure to require such amounts, deposits or bonds shall not limit the remedies otherwise available to the City of Milwaukee.
21. **TERMINATION FOR CONVENIENCE OF THE CITY**. The City may terminate this Contract at any time for any reason by giving at least ten (10) days' notice in writing from the City Purchasing Director to the Contractor. If the Contractor is terminated by the City as provided herein, the Contractor will be paid an amount which bears the same ratio to the total compensation as the commodities actually and satisfactorily provided, less payments previously made.
22. **INTEREST IN CONTRACT** – No officer, employee or agent of the City of Milwaukee who exercises any functions or responsibilities in connection with the review, approval or administration of this contract shall have any personal interest, direct or indirect, in this contract.
23. **FEDERAL EXECUTIVE ORDERS 12549 AND 12689 DEBARMENT AND SUSPENSION** – The City of Milwaukee reserves the right to cancel this contract with any federally debarred contractor or a contractor that is presently identified on the list of parties excluded from federal procurement and non-procurement contracts.
24. **OTHER PROVISIONS** - Both parties understand that the City is bound by the Wisconsin Public Records Law, and as such, all of the terms of this Agreement are subject to and conditioned on the provisions of Wis. Stat. Section 19.21, *et seq.* Contractor acknowledges that it is obligated to assist the City in retaining and producing records that are subject to Wisconsin Public Records Law, and that the failure to do so shall constitute a material breach of this Agreement, and that the Contractor must defend and hold the City harmless from liability under that law. Except as otherwise authorized, those records shall be maintained for a period of seven (7) years after receipt of final payment under this Agreement.